

CHRONIC

SSCI

OEXA 83-1582  
29 June 1983

MEMORANDUM FOR: Director, Office of External Affairs

FROM: Burton L. Hutchings  
Chief, Legislative Liaison Division, OEXA

SUBJECT: SSCI 28 June Open Hearing on FOIA (S. 1324)

1. The hearing began at 10:00 a.m. and ran until approximately 1:00 p.m.; Senator Goldwater chaired for most of the hearing but turned the gavel over to Senator Durenberger at about noon. Senator Leahy and Senator Inouye were the only other SSCI members present. There was reasonably good attendance, but no television coverage, and most spectators drifted out well before the hearing ended. Witnesses appeared in the following order:

Mary C. Lawton, DoJ - Read testimony (attached), gave thoughtful and forceful answers to questions. Said that this unamended Bill has the strong backing of the Administration, that judicial review is not addressed in the Bill, and that Justice would urge courts not to review the DCI's designation of operational files. This Bill is tightly crafted for CIA alone; it is not the "camel's nose" of an Intelligence Community effort to gain exemption. S. 1324 is independent of S. 774 and the Leahy/Durenberger Bill. Personal requests for information would not be affected. A time limit on file designation is in theory alright, but practically an impossibility.

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[redacted] ACLU - Summarized his statement (attached). Characterized this Bill as something that the ACLU can possibly support if further clarifications are forthcoming, said that this is a result of the Agency's backing away from its earlier insistence on full exemption, but raised the issue of judicial review of files designated as operational, saying that this is "absolutely essential". Faulted the Agency's FOIA program as being grudging and uncooperative. He wants to drop the concept of DCI designation of files, and have Congress (in the Bill language) state with specificity what ops files are. In the case of a dispute over whether a file is correctly designated as operational, he wants de novo review by the courts, not necessarily document by document, but on the larger question of the character of the file. He had no firm view on the question of a time limit for review and possible declassification; he says that the CIA's answers for the record so far are unsatisfactory on the question of improprieties, and that there must be clear language on this either in the Bill or in the legislative history. [redacted] are already in agreement on such language, in the Mazzoli negotiations.)

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[redacted] ANPA - Read statement (attached), which on balance is mildly supportive, with reservations. ANPA wants judicial review, is adamant that only CIA be exempted, and wants clarification of the CIA's assurances that FOIA processing of non-exempt files will be substantially speeded up. Mr. Rowe realizes that great trust is being reposed in the CIA itself and in the Congressional oversight committees, and seems warily willing to give it a try. Questioning was non-specific and desultory.

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[redacted] Sigma Delta Chi - Summarized his statement (attached). Gave mild "we do not oppose, if..." statement, and then raised a host of "unanswered questions". His statement and demeanor was the most combative of all the witnesses, and the most political, sniping at the Reagan Administration's overall information policy. He challenged the Committee with the statement that "the blame for not preventing (future) Agency abuses will be laid directly at the Committee's door". I believe that his attitude lost him many points with the Members and staff.

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[redacted] ABA - Moore summarized his statement, and made a very strong case for supporting this Bill as written. (Unfortunately only Senator Durenberger was in the room at the time.) In response to questions, Moore said that existing entities can handle any question of improprieties, that this bill should be non-controversial, and virtually cost-free. Senator Durenberger expressed less faith in Congressional oversight than Moore. John Shenefield then made an exceptionally lucid and supportive statement, backing the Bill virtually without reservations, and saying that in his opinion judicial review was unnecessary and inappropriate.

[redacted] GW University - Read her statement (attached), and primarily called for a time limit, so that historians could hope at some time to be able to review intelligence information. It was painfully obvious that [redacted] either had not read or did not understand the Bill; Senator Durenberger offered to send her clarifying information from earlier hearings. There were no questions of significance.

2. One additional topic that came up in the questioning was the issue of who can decide or designate when an activity is no longer covert, so that it loses its operational file designation. There apparently was confusion over whether the Agency had testified that only the President could so acknowledge a heretofore covert operation. Mary Lawton gave a good answer, with which subsequent witnesses seemed to agree--that the rules establishing the oversight committees provide for a method of making public classified information, even against the wishes of the President, so that Congress is also armed with the power to acknowledge.

[redacted]  
Burton L. Hutchings  
Chief, Legislative Liaison Division

Attachments:  
As stated

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